

I. REMARKS

In the 8/31/2011 Office Action, all of the pending claims (58-62 and 63-68) were rejected under 35 USC §103(a) as unpatentable over Dwight, (Des. 401,220) in view of Barna (5,775,935) and further in view of Moss (5,862,774). In Response, Applicants herein traverse the rejections. In addition, Applicant has amended claims 58 to improve wording.

II. Rejections Under 35 U.S.C §103

Claim 58-62 and 63-68 were rejected under 35 USC §103(a) as unpatentable over Dwight, (Des. 401,220) in view of Barna (5,775,935) and further in view of Moss 5,862,774. Applicants note the Examiner's admission that "Dwight is silent as to the hatching being a representation for color markings around the different AC outlets..." However, the Examiner then goes on to state on page 3 of the Office Action, without any accompanying support, that "it would have been obvious to one having ordinary skill in the art to have interpreted the hatching around the AC outlets as color markings... for selectively identifying one AC outlet from another...". (Underlining added for emphasis). By speculating that one having ordinary skill in the art could have 'interpreted the hatching...as color markings', the Examiner has read into the cited references claim elements that he admits are not in those references. Again, no authority for that process is provided.

A 103(a) rejection presumes the existence of differences between the subject matter claimed and the teachings of prior art. Otherwise a rejection under 102 would have sufficed. Thus, the examiner must be able to point to something that suggests in some way a modification of a particular reference in order to arrive at the claimed invention. "[T]he test is whether the combined teachings of the prior art, taken as a whole" suggest the modifications to the person of ordinary skill in the art. In re Napier, 55 F.3d 610 (Fed. Cir. 1995). See also WMS Gaming, Inc.,

v. International Game Tech., 184 F.3d 1339, 1355 (Fed. Cir. 1999). There must be a basis for modifying a reference(s) either in the art or in other contemporaneous evidence, if the reference is otherwise silent on a claim element. "Obviousness cannot be established by combining the teachings of the prior art to produce the claimed invention, absent some teaching, suggestion or incentive supporting the combination." ACS Hospital Systems Inc. v. Montefiore Hospital, 732 F.2d 1572, 1577 (Fed. Cir. 1984).

Absent such a showing, the examiner has impermissibly used "hindsight" by using the Applicant's teaching as a blueprint to hunt through the prior art for the claimed elements and combine them as claimed. Such an approach would be "an illogical and inappropriate process by which to determine patentability" *Sensonic, Inc. v. Aerosonic Corp.*, 81 F.3d 1566, 1570 (Fed. Cir. 1996).

Next, the Examiner has not identified the currently pending claim elements and applied the references directly to them. For instance, the Office Action does not state which, if any, reference comprises the claim elements of 'assigning a separate and distinct color-coded outlet for selectively identifying each outlet of said power strip, and assigning to each color-coded outlet a different color from any other such color-coded outlet'.

Instead, the Examiner inexplicably argues that the Barna reference discloses a system and method using a color coded tag to tag a power cable of a device, which is not currently claimed. It appears this section of the Office Action was cut and pasted from a previous, outdated Office Action and is not relevant. However, such action may be probative of the Examiner's failure to give proper consideration to the currently pending claims.

Further, the cited references fail to disclose separate and distinct color-coded outlets for selectively identifying each outlet of said power strip. Applicants have claimed either the step of

“assigning to each color-coded outlet a different color from any other such color-coded outlet”, or a system comprising “a plurality of unique colored areas disposed on or proximate to each outlet”. (Emphasis added). As acknowledged by the Examiner, Dwight’s hatching fails to represent color markings, and Applicants assert that Barna fails to disclose separate and distinct color coded outlets. As Barna’s figures 3, 4, and 5 clearly show, separate connection ports (20a and 20b) (or ‘outlets’ as used by the Examiner) use the same color code (44a).

Therefore, the argument that Barna discloses a distinct color code for each ‘outlet’ is not supported by the references. In fact, Barna’s use of the same color for multiple outlets shows that it not only fails to disclose Applicants’ claim element, but that it teaches away from this claim element.

The Examiner then correctly acknowledges that the Dwight and Barna references fail to disclose the claim element of providing colored indicia adjacent to each color-coded outlet, wherein each indicium comprises a background color identical to its adjacent color-coded outlet. Here, the Examiner introduces the Moss reference to support the position that the remaining claim elements had been disclosed. In a nutshell, Moss combines colors and numbers to identify which wires are connected to which circuits.

The Examiner has not shown, nor could he, that Moss (or any other reference) discloses indicia identifying distinct devices that are assigned to distinct outlets. In Moss, device indicators are not even discussed. Moss is confined to wires connecting circuits and does not identify which devices are plugged into any particular outlet.

The Examiner simply states that the elements claimed by Applicant “would have been obvious to one having ordinary skill in the art at the time of the invention” without even providing a perfunctory reason to support the contention. And again, the Examiner does not

state which, if any, reference comprises the claim elements, or why additions to the references or combinations of the references would have been 'obvious'. Applicants assert that the Examiner has failed to make a prima facie showing of obviousness under Section 103.

The PTO has the burden under Section 103 to establish a prima facie case of obviousness. See *In re Piasecki*, 745 F.2d 1468, 1471-72 (Fed. Cir. 1984). It can satisfy this burden only by showing some objective teaching in the prior art or that knowledge generally available to one of ordinary skill in the art would lead that individual to combine the relevant teachings of the references. See *In re David H. Fine*, 837 F.2d 1071 (1988).

II. Conclusion

The Applicant respectfully asserts that the present invention is not anticipated by, nor rendered obvious, in light of the cited references, taken alone or in any combination. Applicants believe that the cited art neither teaches nor suggests any combination of them to achieve the unique, presently claimed invention. Therefore, Applicants respectfully request favorable consideration of the above remarks, withdrawal of the present rejections, and passage of the pending claims to allowance. The Examiner is cordially invited to telephone the undersigned for *any* reason which would advance the instant application to allowance.

Respectfully Submitted,



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